

RILITE AGGREGATE COMPANY

IBLA 76-498

Decided August 11, 1976

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting application N 11815 for a mineral lease of lands within the Lake Mead Recreation Area.

Affirmed as modified.

1. Act of October 8, 1964 -- National Park Service Areas: Land: Mining -- Mineral Lands: Leases -- Public Lands: Leases and Permits -- Regulations: Generally

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

2. Act of October 8, 1964 -- National Park Service Areas: Land: Mining -- Materials Act -- Mineral Lands: Leases -- Mineral Leasing Act: Generally

Minerals which are subject to location under the general mining law on public land outside the Lake Mead Recreation Area are subject to the leasing provisions of the Act of October 8, 1964, within the Recreation Area. But, minerals which are disposable by sale under the 1947 Materials Act when situated outside the Recreation Area are also subject to such disposal within it.

## 3. Act of October 8, 1964 -- Mineral Lands: Leases

A decision to reject an application for a mineral lease within the Lake Mead Recreation Area will be sustained in the absence of a showing that the authorized officer acted unreasonably in rejecting the lease for reasons relating to environmental protection.

APPEARANCES: Dennis P. Bryan, Geologist, Rilite Aggregate Company.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

Rilite Aggregate Company appeals from a decision dated January 26, 1976, in which the Nevada State Office, Bureau of Land Management, rejected its application for a mineral lease for perlite and block pumice on land within the Lake Mead Recreation Area. In rejecting the lease, the State Office followed the recommendations of the National Park Service, acting through the Supervisor of the Lake Mead Recreation Area, that the lease not be issued because: (1) perlite is a common variety mineral, and (2) because of potential damage to the environment of the area if the lease were granted.

Mineral leasing in the Lake Mead Recreation Area is authorized by the Act of October 8, 1964, 16 U.S.C. § 460n-3 (1970), which gives the Secretary or his delegate full discretion to grant or reject lease applications.

[1] The State Office also indicated in its decision that it was deferring to the recommendations of the National Park Service because of the requirement of 43 CFR 3501.2-6 that "[l]eases or permits be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or other instrumentality having jurisdiction over the lands containing the deposit \* \* \*." The National Park Service is not "an executive department, independent establishment, or other instrumentality," but, rather, is a subordinate agency within the Department of the Interior. Therefore, the State Office's reliance upon the regulation was misplaced in this instance. The Department is not thereby bound by the National Park Service's granting or withholding of consent to lease minerals on Park Service lands. Its recommendations, however, are important factors in considering whether or not to lease such lands.

[2] Appellant first contends that perlite is not a common variety mineral and is therefore leasable. The State Office decision merely stated that " \* \* \* it has been determined that perlite is a common variety mineral \* \* \*," without elaborating on how that determination was made. The State Office concluded that the mineral could only be extracted pursuant to the Materials Act, 30 U.S.C. §§ 601 et seq. (1970).

Because of our disposition of this case, infra, we need not determine whether perlite is a common variety mineral and therefore not leasable. We note, however, that in several cases the Department has dealt with perlite and assumed in those cases that perlite is a locatable mineral. Estate of Arthur C. W. Bowen, Deceased, 18 IBLA 379 (1975); Estate of Arthur C. W. Bowen, Deceased, 14 IBLA 201, 80 I.D. 30 (1974); Chemi-Cote Perlite Corp. v. Bowen, 72 I.D. 403 (1965); United States v. Anderson, 74 I.D. 292 (1967). The question of whether perlite is a common variety mineral and, consequently, not locatable after July 23, 1955, 30 U.S.C. § 611 et seq. (1970), was never raised, even though at least two of the claims in the various Bowen cases were located after July 23, 1955. In each case the perlite was being processed for use in a manner dependent on the rather unique properties of the mineral. It is also true that perlite is commonly used as ordinary aggregate, and where that is its principal use it may well be a common variety of mineral not subject to location under the mining law. That determination could only be made after all the facts have been fully explored.

The assertion by the Superintendent of the Lake Mead Recreation Area that perlite is a common variety mineral, and therefore not leasable, is not supported by sufficient information. We are of the opinion that, as a general proposition, minerals which are subject to location under the 1872 mining law on public lands outside the Lake Mead Recreation Area are subject to the leasing provisions of the Act of October 8, 1964, within the Recreation Area. But, minerals which are disposable by sale under the 1947 Materials Act outside the Recreation Area are also subject to such disposal within it. 43 CFR 3566.2; 43 CFR 3566.6.

The State Office decision made no mention of that part of the appellant's lease application to mine block pumice. Block pumice is specifically excluded from the common variety classification by the Act of July 23, 1955, 30 U.S.C. § 611 (1970), and, therefore, is leasable within the Lake Mead Recreation Area.

[3] Appellant next argues that the State Office decision erred in citing environmental considerations as a ground for rejection of appellant's lease application. The State Office decision specifically mentioned that the proposed lease site is in the study area for desert bighorn ecology research and is also under consideration as a wilderness area. Appellant asserts that its proposed mining operations will have little effect on the environment of the area because actual mining operations would cover an area smaller than the 80 acres applied for; because the proposed lease site is on the western border of the Recreation Area so that it will not be necessary to construct access roads across Recreation Area Land; and because the proposed lease site is one mile from an "established mining district" and mining operations on the site would therefore be "compatible with past land uses in the area."

With regard to the environmental considerations, the Supervisor of the Lake Mead Recreation Area stated in his report:

Currently, the entire River Mountains Area, including the proposed lease site, is the study area for desert bighorn ecology research being jointly conducted by the National Park Service, Nevada Fish and Game, and University of Nevada, Las Vegas.

Based upon the current research study of sheep in this area and helicopter inventories, the River Mountains bighorn herd exhibits the second highest density rating found in Nevada with an average of 7.7 sheep per square mile for the habitat area of 35.9 square miles. This information is based on an estimated population of some 283 sheep.

It is apparent that habitat and environmental conditions within the subject area must be near optimum to hold this density of animals.

The Nevada Department of Fish and Game feels that such a high density bighorn habitat area must be protected against encroachment and would oppose any type of mining venture that might erode away the value of this area as quality habitat for bighorn.

The lease site is also included in an area proposed as Wilderness by the National Park Service and the Wilderness Society. <sup>1/</sup>

In another case involving the rejection of a mineral lease application for land within the Lake Mead Recreation Area, we held that:

A decision \* \* \* to reject, in the public interest, an application for a mineral lease is within the discretionary authority of the authorized officer, and in the absence of any showing that the decision constituted an abuse of such discretion, the decision will be sustained. George S. Miles, Sr., 7 IBLA 372, 373-74 (1972). See also Apache Oro Company, 16 IBLA 281 (1974).

In light of the land's established use as a Recreation Area and its specific use as a desert bighorn sheep study area, it is reasonable to anticipate that even limited mining operations would have adverse effects on an environment worthy of preservation. The current consideration of the site for inclusion in a wilderness area gives further support to the decision to reject the application on environmental grounds. Accordingly, in the absence of a showing by appellant that these environmental considerations are insufficient grounds for rejection of the application, we hold that the State Office did not abuse its discretion in rejecting the application in order to protect the ecological features of the area.

Although we have held that there was insufficient information for concluding that perlite is not a leasable mineral, the environmental considerations cited by the State Office are sufficient to support its decision to reject the lease application.

Accordingly, pursuant to the authority delegated by the Secretary to the Board of Land Appeals, 43 CFR 4.1, the decision appealed from is affirmed as herein modified.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Frederick Fishman  
Administrative Judge

<sup>1/</sup> The report also stated that the proposed lease site has "been identified as an Environmental Protection Zone in our current Statement for Management. We also believe that any surface disruption would be highly detrimental to the recreational resources of the recreation area."

